

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| -----X | : | |
| UNITED STATES OF AMERICA, | : | |
| | : | 09-CR-0341 (VM) |
| | : | |
| - against - | : | <u>ORDER</u> |
| | : | |
| HECTOR RAYMOND PENA, | : | |
| | : | |
| Defendant. | : | |
| -----X | : | |

VICTOR MARRERO, United States District Judge.


By letter dated August 5, 2019, defendant Hector Raymond Pena ("Hector Pena") requested that the Court appoint counsel to assist him in challenging his conviction, at least in part, pursuant to United States v. Davis, 139 S.Ct. 2319 (2019). (See Dkt. No. 422.) As the Court explained in its Order dated June 2, 2020 (see Dkt. No. 429), the Court has deferred ruling on Hector Pena's request for appointment of counsel until the completion of briefing on Jose Pena's apparently substantially identical Davis claims. The Court further noted that the completion of such briefing is contingent upon resolution of Jose Pena's appeal before the Second Circuit, which has been stayed pending resolution of potentially relevant cases before the Supreme Court and Second Circuit. (See id.)

Counsel for Jose Pena has since requested that the Court accept a "placeholder" motion based on Jose Pena's Davis claims pursuant to 28 U.S.C. Section 2255 ("Section

2255"), as it is unclear whether Jose Pena's pursuit of related relief before the Second Circuit tolls the time for him to submit a formal motion under Section 2255. (See Dkt. No. 430.) While the Court grants Jose Pena's request by separate motion, it notes that Hector Pena has sought similar relief in his pending appeal before the Second Circuit. (See Pena v. United States, No. 19-1545, Dkt. No. 39.) Because it is similarly unclear whether Hector Pena's pending appeal tolls the time for submission of his Section 2255 motion, and because Hector Pena's request for counsel is contingent on the briefing of Jose Pena's claims, the Court now construes Hector Pena's request for appointment of counsel (Dkt. No. 422) as a timely Section 2255 motion based upon Davis. The Court will hold Hector Pena's Section 2255 Motion in abeyance until briefing on Jose Pena's claims may be completed. The Clerk of Court is hereby ordered to mail this Order to Hector Pena at Atwater United States Penitentiary, P.O. Box 019001, Atwater, CA 95301.

SO ORDERED.

Dated: New York, New York
12 June 2020


Victor Marrero
U.S.D.J.